IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 172 OF 2004.

Shri Mahadev Raghuvir Naik,
r/o Pansulem, Dharbandora,
Tisk-Goa. ... Applicant.

VERSUS

S T A T E
Through Police Inspector,
Valpoi Police Station,
Valpoi, Goa. ... Respondent.

Shri S.D. Lotlikar, Sr. Advocate with R.S. Sardessai, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: N.A. BRITTO, J.

DATE: 6TH AUGUST, 2004.

ORAL ORDER:

Heard Shri Lotlikar, learned Senior Counsel on behalf of the Applicant and Shri S.N. Sardessai, the learned Public Prosecutor on behalf of the respondent.

2. The applicant appears to have been working as Secretary of the Village Panchayat, Guleli who was placed under suspension by the Director of Panchayats with effect from 16.2.04. Prior to that, complaint was filed against him and the Sarpanch of the Village Panchayat by the B.D.O., Satari, Valpoi with the allegation that they had misappropriated Panchayat funds to the tune of Rs.3,15,512/- between 1.4.03 to

2.12.04. The said complaint of the B.D.O. came to be registered as Crime No.46/2004 under Section 409 r/w S.34 I.P.C. on or about 9.1.04. Apparently the applicant-accused was not arrested any time thereafter, but the applicant subsequently filed an application for anticipatory bail on 27.7.04 which came to be decided by Order dated 31.7.04.

3. The learned Sessions Judge, found that the applicant's case was not a fit case for invoking the provisions of S.438 of Cr.P.C. 1973 because the records showed that the applicant was the Secretary of the said Village Panchayat from 1.4.03 to 12.1.04 and the records also showed that the accounts of the Panchayat were jointly operated by the applicant and the Sarpanch. The learned Sessions Judge also made other observations pertaining to the facts of the case which are not required to be mentioned for the disposal of the application.

4. When the application came up for hearing, it was noticed that a copy of the reply prepared by the I.O. was given to the learned Senior Counsel Shri Lotlikar without the said reply having been filed in court. Shri Sardessai, the learned P.P. submitted that the said reply was prepared without his consent and given to learned Senior Counsel Shri Lotlikar. He also made

a grievance against the I.O. for not consulting him before preparing the said reply. In the circumstances the copy of the reply which was submitted to this court in the absence of Shri Sardessai was returned to him. Shri Sardessai then sought time to make his submissions on the bail application. This request has been refused.

5. As rightly stated, the applicant-accused has been under suspension from 16.2.04 and although the crime against him was resisted on 9.1.2004, the applicant was not arrested. The applicant was also not arrested even after the anticipatory bail application was rejected by the Sessions Court on 31.7.04 and this only shows that the I.O. is not at all interested in arresting him probably because the major part of the investigation like seizure of the account books, copy of receipts, etc. has already been completed by him. The said reply which was prepared by him also shows that the presence of the applicant was required only for the purpose of obtaining the signature/handwriting of the applicant-accused. In other words, it is not the case of the respondent that the presence of the applicant-accused is required for any custodial interrogation nor such custodial interrogation has been justified by the respondent in this case. Being so, in my view the application deserves to succeed.

6. In the event of the arrest of the applicant-accused, the accused shall be released on bail upon execution of a Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the I.O. and with a further condition that the accused shall cooperate with the I.O. in further investigation of the case by attending the police station, if required, for the purpose of obtaining the handwriting, signatures, etc. of the applicant.

Authenticated copy be issued to the learned Public Prosecutor.

N.A. BRITTO, J.

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